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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

Cingular Wireless LLC Petition for Waiver

J.R. Carbonell
Carol L. Tacker
M. Robert Sutherland

CINGULAR WIRELESS LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

Telephone: (404) 236-6364
Facsimile: (404) 236-5575

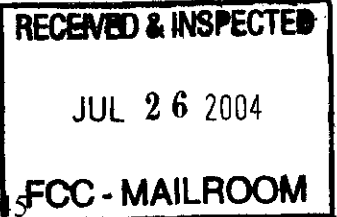
Counsel for Cingular Wireless LLC

Date: July 23, 2004

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CINGULAR WIRELESS LLC PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission's Rules,¹ Cingular Wireless LLC (Cingular) requests that the Commission grant it a waiver from those portions of the Commission's Universal Service Fund (USF) rules to eliminate the effect of first quarter 2003 projection errors in the annual true-up process. Cingular requests the same relief recently granted to AT&T Corp. (AT&T), SBC Communications, Inc. (SBC) and the Verizon Telephone Companies (Verizon).² Like the companies granted relief in the *Waiver Order*, Cingular under-forecast its first quarter, 2003 revenues. In the absence of a waiver, the true-up procedures adopted in the *Reconsideration Order*³ will cause Cingular to pay approximately \$1.1 million in excess of its "appropriate contribution" based on its actual revenues.

On January 27, 2004, AT&T filed for a waiver of the 2003 universal service true-up process adopted in the *Reconsideration Order*. That order states that

¹ 47 C.F.R. § 1.3.

² *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC No. 04-170, rel. July 20, 2004 (*Waiver Order*).

³ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (*Reconsideration Order*).

“USAC will subtract revenues *projected* for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor’s actual revenues for the second through fourth quarters of 2003.”⁴ AT&T requested that USAC subtract AT&T’s *actual* collected revenues for the first quarter 2003, rather than its projected revenues when performing the true-up. On January 30, 2004 the Commission issued a Public Notice inviting comments on the AT&T waiver request. On February 27, 2004, Cingular filed comments supporting AT&T’s waiver request. Cingular noted that it too had under-forecast its first quarter, 2003 revenues, and asked that the relief granted to AT&T be made generally available to similarly situated carriers. On that same day, Verizon and SBC filed waiver requests of their own seeking relief from the true-up process adopted in the *Reconsideration Order*.

On July 20, 2004, the Commission released the *Waiver Order* granting relief to AT&T, SBC and Verizon. The Commission adopted an alternative methodology to the ones proposed by AT&T, SBC and Verizon. The Commission directed the USAC Administrator to subtract Petitioners’ historical gross billed revenues for the first quarter of 2003 reported on their Form 499-Qs, adjusted to reflect their annual uncollectible rates for 2003 reported on their Form 499-As when conducting true-ups for the Petitioners. Using this procedure, the Administrator would be able to true-up using data already in its possession rather than having to collect additional data—petitioners’ actual first quarter 2003 collected revenues. In a footnote, the Commission denied Cingular’s request that relief be extended to all similarly situated carriers, but invited individual carriers to

⁴ *Reconsideration Order* at ¶ 17 (emphasis added).

file for similar waiver relief “and such petitions would be evaluated consistent with the precedent established in this Order.”⁵ Cingular hereby petitions for a waiver directing the Administrator to true-up Cingular’s 2003 revenues using the same alternative procedure adopted for AT&T, SBC and Verizon.

In the *Waiver Order* the Commission noted that Section 254 of the Communications Act requires that interstate telecommunications providers contribute to the universal service fund on an equitable and non-discriminatory basis. The Commission noted that the purpose of the annual true-up is to ensure that such providers “contribute appropriate amounts to the universal service mechanisms.”⁶ The transition to a modified revenue-based assessment system in 2003, however, would result in these carriers contributing more than their equitable share as a result of under-forecasting their first quarter, 2003 revenues. This result was found to constitute sufficient special circumstances to warrant a waiver of the Commission’s universal service true-up procedures for 2003. The Commission concluded that this result was in the public interest because the Petitioners’ first quarter 2003 revenues were not utilized to calculate universal service contributions.⁷

Cingular is in the same circumstance. Absent a waiver, Cingular will contribute approximately \$1.1 million more than its “equitable share” to the universal service mechanisms. Under these circumstances, it is in the public interest to grant Cingular a waiver of the 2003 true-up rules and direct the

⁵ *Waiver Order*, ¶ 7, fn. 15/

⁶ *Waiver Order*, ¶ 7.

⁷ *Id.*

Administrator to true-up Cingular using the same alternative procedure adopted in the *Waiver Order*.

Respectfully submitted,

s/ M. Robert Sutherland

J.R. Carbonell

Carol Tacker

M. Robert Sutherland

CINGULAR WIRELESS LLC

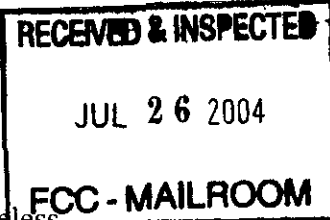
5565 Glenridge Connector, Suite 1700

Atlanta, GA 30342

(404) 236-6364

Counsel for Cingular Wireless LLC

July 23, 2004



CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 23rd day of July, 2004, courtesy copies of the foregoing Petition for Waiver of Cingular Wireless LLC was sent via first class mail, postage prepaid to the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

In addition, the document was filed electronically in the Commission's Electronic Comment Filing System on the FCC website.

s/ Lydia Byrd
Lydia Byrd